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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,223	07/30/2001	Barry Shantz	7496RC	4950

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EXAMINER

TRAN, SUSAN T

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 06/26/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/918,223

Applicant(s)

Shantz et al.

Examiner

Susan Tran

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1615



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Apr 9, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 6-25 6) ☐ Other:

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DETAILED ACTION

Receipt is acknowledged of applicant's Letter filed 07/30/01, Corrected Filing Receipt filed 09/13/01, Information Disclosure Statement filed 01/04/02 and 01/30/02, Amendment A filed 04/09/02, and Change in Address filed 04/02/02.

Claim Rejections - 35 U.S.C. § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu et al. US 5,871,763.

Luu teaches a substrate treated with lotion in a wipe or nonwoven material (column 3, lines 44-50). The lotion composition including non-ionic surfactant, such as cocophosphatidyl PG-diamonium chloride of quaternary ammonium compounds (column 8, lines 48 through column 9, lines 1-59). The lotion composition further comprising water (column 4, lines 1-5), and fragrance (column 12, lines 49-60).

The examiner notes that the cited reference contains lotion having a low water content. However, the difference in the amount of water does not impart patentable distinctness, since the prior art obtains the same results desired by applicants, i.e., a substrate treated with lotion. Thus, it

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would have been obvious for one of the ordinary skill in this art to, by routine experimentation determine a suitable amount of water to obtain a desirable lotion suitable for use in a disposable wipe, because the reference teaches that the lotionized substrate can be prewetted with water (see abstract).

2. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coury et al. US 5,618,850, and Luu et al.

Coury teaches a lotion, cream, or gel composition comprising natural or semi-synthetic polymer, e.g., polyethylene glycol (PEG); fragrance; moisturizers; emulsifying agent; water; and emollients, e.g., alcohol (columns 9 & 10; columns 13 & 14). The composition further comprising surfactant includes cationic, amphoteric, or nonionic surfactant; and preservatives (columns 15-16). The composition can be formulated as creams or gels for use in conjunction with a suitable applicator such as a liquid-impregnated fabric, e.g., tissue wipe (column 17, lines 33-47).

Although Coury teaches the use of many surfactants including cationic surfactant, Coury is silent as to the teaching of phosphate-quaternary amine compound. Luu teaches substrate treated with lotion in a wipe or nonwoven material (column 3, lines 44-50). The lotion composition including cocophosphatidyl PG-diamonium chloride of quaternary ammonium compounds (column 8, lines 48 through column 9, lines 1-59). The lotion composition further comprising water (column 4, lines 1-5), and fragrance (column 12, lines 49-60). Thus, it would

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have been obvious for one of the ordinary skill in this art to modify Coury's lotion using the cocophosphatidyl PG-diamonium chloride as surfactant taught by Luu, because the references teach the advantageous results in the use of cationic surfactant in lotion useful in disposable wiping substrate. The expected result would be disposable substrate treated with lotion that feel smooth, lubricious, and nongreasy.

3. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu et al, in view of Blieszner et al. US 5,648,083.

Luu is relied upon for the reasons stated above. The reference is silent as to the percent by weight of water content in the lotion composition.

Blieszner teaches a composition comprising emulsions containing water and silicone oil, fragrances, moisteners, humectants, and emollients (column 4, lines 11-19). The amount of water in the composition is from about 80% to about 99.5% by weight of the composition (column 4, lines 30-35). The composition further comprising water soluble polymer (column 6, lines 60 through column 8).

The examiner notes that Luu's reference states the reason for low water content in the lotion is to prevent the growth of microorganism and to improve the stability of shelf storage. Means while, Blieszner teaches high water content lotion composition, anti-microbial is added as a preservative agent to improve shelf life to the products (column 8, lines 62 through column 9, lines 1-5). Thus, it would have been prima facie obvious for one of the ordinary skill in the art to

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modify Luu's lotion composition with the water content in view of the teaching of Blieszner.

The reason for this modification is to obtain a desirable lotion composition suitable for using in a disposable wipe.

4. Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Luu et al., in view of Muckenfuhs US 5,332,118.

Luu is relied upon for the reasons stated above. Regarding to claims 14-20, the reference differs from applicant's invention by not teaching the substrate treated with lotion being in a Z-fold pop-up dispensing system.

Muckenfuhs teaches a dispensing sheet comprising nonwoven material, emulsion, moisturizers, emollients, preservative, and allantoin (column 10, lines 1-55). The sheets are premoistened with moistening agent (column 13, lines 60-65). The container for the sheets is a pop-up dispensing having an aperture (column 8, lines 30-40), and the sheets are in a Z-folded, interleaved configuration (column 5, lines 62-68). Thus, it would have been prima facie obvious for one of the ordinary skill in the art to modify Luu's substrate treated with lotion with the use of the pop-up dispensing system in view of the teaching of Muckenfuhs. The reason for this modification is to obtain a suitable container that will provide a predictable, repeatable separation process for lotion-wipes.

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Response to Arguments

5. Applicant's arguments filed 004/09/02 have been fully considered but they are not persuasive. Nonetheless, the 102(b) rejection has been withdrawn. The examiner maintains the original 103(a) rejections.

Applicant argues that the examiner has failed to show any motivation, suggestion or teaching as to why one of ordinary skill would disregard the teaching in Luu and change from a substantially anhydrous lotion to an aqueous one. In response to applicant's argument, the examiner has indicated that "since the prior art obtains the same results desired by the applicant, i.e., a substrate treated with lotion", a lotionized substrate, such as tissue, towel, napkin, or wipe that can be prewetted with water. Accordingly, it would have been obvious to the skilled artisan to add more water to Luu's lotion, because Luu suggests adding water to a lotionized substrate. Absent of showing unexpected result, it is the position of the examiner that no criticality is seen in the aqueous lotion since Luu suggests adding water to a lotionized substrate. Furthermore, applicant's generic claim does not recite the high content or high concentration of water. The high concentration of water in the lotion has not been shown to provide any unusual and/or unexpected results over the applied prior arts.

Applicant argues that Luu does not teach the minimum percent of water content in the lotion. However, the examiner relies on the teaching of Luu in column 4, lines 1-5, wherein the lotion contains about 15% water; and Luu's abstract teaches the lotionized substrate can be prewetted with water. It is the position of the examiner that, the different in the amount of water

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does not impart patentable distinct since the prior art obtains the same results desired by applicants, i.e. a substrate treated with lotion. Thus it would have been prima facie obvious to one of the ordinary skill in the art to, by routine experimentation determine a suitable amount of water and suitable amount of antimicrobial agent for a well known purpose, because the reference teaches the advantageous results accrue in the use of lotionized substrate.

Applicant questions "why would one of ordinary skill add water to the composition of Luu"? The reason is Luu teaches adding water to the lotionized substrate (see abstract).

Applicant is confused as to why the examiner has not considered Mr. Bullock's argument dated March 29, 2000. In response to applicant's confusion, there is no argument by Mr. Bullock filed March 29, 2000 in this case. The argument made by Mr. Bullock is in response to case SN 09/344,695, which is now abandoned.

Applicant argument that the examiner rejected claims 1-9 as being unpatentable over Luu et al., in view of Blieszner et al. Respectfully, there is no such rejection presented in the instant application. The Office Action dated 09/17/01 responding to this application presented rejection of claims 8 and 9 under 103(a) as being unpatentable over Luu et al., in view of Blieszner.

Applicant further argues that there is no suggestion or motivation to combine the teachings of Luu with Blieszner, because the examiner has not stated where in Luu she finds a teaching of an aqueous solution, as well as where in Blieszner she finds a teaching of an aqueous solution. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the

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teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, applicant's attention is drawn to Blieszner's abstract and column 4, lines 21-36, where the preferred composition includes from about 91% to about 99.5% water, and that water aids in wetting of the substrate of wipe products incorporating the composition. In view of this, Luu also teaches water that can be added in wetting the lotionized substrate (see abstract).

Applicant argues that there is no teaching or suggesting in Muckenfuhs that water or aqueous based lotion is any better than oil based lotion. As mention above, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. In this case, Muckenfuhs is relied upon solely for the teaching of an improved pop-up wipes dispenser with modified Z-fold stack configuration.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Tran whose telephone number is (703) 306-5816. The examiner can normally be reached on Monday to Thursday from 6:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page, can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.


THURMAN K. PAGE
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